

JACQUELINE L. McGARVA
CAL-NEVA WILLOW CREEK RANGE IMPROVEMENT ASSOCIATION

IBLA 81-62

Decided December 17, 1981

Appeals from a decision of the Acting State Director, California State Office, Bureau of Land Management, designating inventory units CA-020-211 and CA-020-609 wilderness study areas.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Sec. 603(a) of the Federal Land Policy and Management Act of 1976 directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory required by sec. 201(a) as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, and from time to time report to the President his recommendations as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

Under Organic Act Directive No. 78-61, Change 3, July 12, 1979, the effects of the imprints of man which occur outside an inventory unit are generally factors to be considered during the study phase of the wilderness review program. Imprints of man outside the unit may be considered during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be

ignored, and if not considered, reasonable application of inventory guidelines would be lost.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherrystems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

APPEARANCES: Jacqueline L. McGarva, pro se, and Jack Swikard, President, Cal-Neva Willow Creek Range Improvement Association, appellants; Dale D. Goble, Esq., Derb Carter, Esq., Office of the Solicitor, for BLM.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jacqueline L. McGarva appeals from the August 28, 1980, decision of the Acting State Director, California State Office, Bureau of Land Management (BLM), designating, inter alia, inventory unit CA-020-211 (Tule Mountain) a wilderness study area (WSA). Jack Swikard, on behalf of the Cal-Neva Willow Creek Range Improvement Association, appeals from this same decision designating inventory unit CA-020-609 (Five Springs) a WSA. In each case, the decision of August 28, 1980, reversed an earlier decision of BLM to exclude these areas from further wilderness review. This earlier decision was published by BLM as the final intensive inventory of public lands outside the California Desert Conservation Area. 45 FR 1457 (Jan. 7, 1980). 1/

[1] Unit CA-020-211 is a 16,950 acre parcel in Ts. 37-39 N., Rs. 13, 14 E., Mount Diablo meridian, Lassen and Modoc Counties, California. BLM's decision of August 28, 1980, designated this Tule Mountain unit a WSA pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more, and roadless islands, of the public lands that were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described

1/ In each case, the unit was dropped from further wilderness review for failure to possess outstanding opportunities for either solitude or a primitive and unconfined type of recreation.

in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). The Secretary is further directed to report from time to time to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Office pursuant to section 603(a) has been divided into three phases by BLM: inventory, study, and reporting. The decision to designate the Tule Mountain unit as a WSA marks the end of the inventory phase and the beginning of BLM's study phase.

In her appeal, appellant McGarva points to certain roads in the WSA which, she claims, are used for salting and checking cattle and for maintaining range improvements. Appellant further states that the roads are used by the general public for hunting access and by BLM for fire control and range maintenance. The effect of a WSA designation, in appellant's view, would be to stop range improvement projects already planned that are designed to improve production of food and fiber. Appellant also notes that a person within the unit can see civilization -- in the form of a railroad and highway -- from any point within the unit.

This latter point of appellant refers to a railroad and highway which are on or adjacent to the western boundary of the unit. Although the appeal procedures noted in the decision of August 28, 1980, do not

permit the State Director to respond to this charge, ^{2/} BLM has on previous occasion rejected the notion that sights and sounds outside an inventory unit automatically preclude the unit from being designated a WSA, despite the fact that such sights and sounds are visible or audible by a person within the unit. See Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

Counsel for BLM calls our attention to Organic Act Directive (OAD) No. 78-61, Change 3, July 12, 1979, in which the Associate Director, BLM, wrote:

g. Imprints of man outside a unit ("sights and sounds"). Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

BLM's approach to the issue of sights and sounds outside the boundaries of a WSA generally results in a postponement of consideration of such impacts. We cannot say that such a policy is unreasonable. In the present case, appellant has not alleged that the highway and railroad are so extremely imposing as to require their consideration during the inventory as suggested by the OAD. We agree with counsel for BLM that such peripheral sights and sounds are a proper subject for the study phase of BLM's review process.

A more serious charge is posed by appellant's allegation that roads exist within the WSA. BLM's narrative accompanying its August 28, 1980, decision acknowledges the presence of two roads dead-ending in the WSA. A map accompanying the narrative further substantiates the presence of two roads leading to Tule Mountain at the center of the WSA.

As set forth above, section 603(a) of FLPMA directs the Secretary to review those roadless areas of 5,000 acres or more of the public

^{2/} BLM's Aug. 28, 1980, decision designating units CA-020-211 and CA-020-609 as WSA's was issued in response to various protests to its final intensive inventory decisions of Dec. 1979. 45 FR 1457 (Jan. 7, 1980). As noted above, this Aug. 28, 1980, decision reversed BLM's final intensive inventory decision. Persons objecting to the Aug. 28, 1980, decision were instructed therein to appeal such a decision directly to the Board, rather than protest this amended decision.

lands which were identified during the inventory required by section 201(a) as having wilderness characteristics. ^{3/} Under section 603(a), roaded areas are not subject to wilderness review, much less to wilderness designation. As the WSA is presently drawn, it is ineligible for further review.

A recent decision of this Board, National Outdoor Coalition, 59 IBLA 291 (1981), held that BLM's practice of designating certain lands within an inventory unit as nonwilderness corridors (cherry systems) was not an unlawful practice or contrary to any Department policy. Lands within a nonwilderness corridor are occupied by roads or other intrusions which would otherwise preclude a unit from wilderness consideration. By this practice, the boundaries of an area containing an intrusion are drawn around the intrusion so as to exclude it from the area considered for wilderness values. So long as an intrusion, such as a road, for example, bisects the unit, the unit may not proceed to the study phase of BLM's review process. We hereby remand case file MT-020-211 to BLM to allow it to redraw the boundaries of the Tule Mountain unit. If the boundaries are redrawn, the unit would be eligible for wilderness review.

A similar problem exists in unit CA-020-609 (Five Springs), a parcel of 47,160 acres located in Ts. 30-32 N., Rs. 16-18 E., Mount Diablo meridian. Although appellant Cal-Neva Willow Creek Range Improvement Association did not point to the presence of roads within the WSA boundaries, the record reveals that such roads clearly exist. ^{4/} A map accompanying the BLM decision of August 28, 1980, shows two roads in the

^{3/} For purposes of the wilderness inventory, BLM has adopted as its definition of a "road," a definition suggested by the legislative history of FLPMA at H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976). Therein, it is stated: "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." Further definitions of the terms in the above definition appear on page 5 of BLM's Wilderness Inventory Handbook (Sept. 27, 1978).

^{4/} Appellant's statement of reasons questioned whether unit CA-020-611 possessed wilderness characteristics. Therein, appellant seemed to believe that BLM regarded the unit as contiguous with the Yolla Bolly Wilderness Area. Representatives of the Solicitor's Office responded to this statement of reasons, noting that Yolla Bolly Wilderness Area was not contiguous with unit CA-020-611 and further noting that the record does not indicate otherwise.

Appellant also argues that a WSA classification will prevent agricultural improvements benefitting livestock and wildlife. Assuming, arguendo, the appellant's statement is true, we agree with BLM that such matters are not controlling during the inventory phase of the wilderness review process.

southern portion of the unit. An element of confusion arises because BLM's narrative, also accompanying the August 28, 1980, decision, refers to "some cherrystem roads" impacting on areas along the periphery of the unit.

It is unclear from the file whether the two roads appearing on the map of CA-020-609 have been excluded from the WSA boundaries by BLM's practice of cherrystemming. The narrative and map accompanying BLM's August 28, 1980, decision appear to be in conflict. Having held in National Outdoor Coalition, supra, that BLM's cherrystemming practice is not unlawful or contrary to any Department policy, we hereby remand case file CA-020-609 to BLM to resolve the uncertainties set forth above. If the two roads appearing on the map accompanying BLM's decision of August 28, 1980, have been previously excluded from WSA boundaries, the unit, as modified, may enter the study phase of BLM's review process. If not, such roads must be excluded before the study phase may begin.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is vacated and the cases remanded for action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

